

Christian Louboutin Bullet Shaped Lipstick

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Chloe Barker



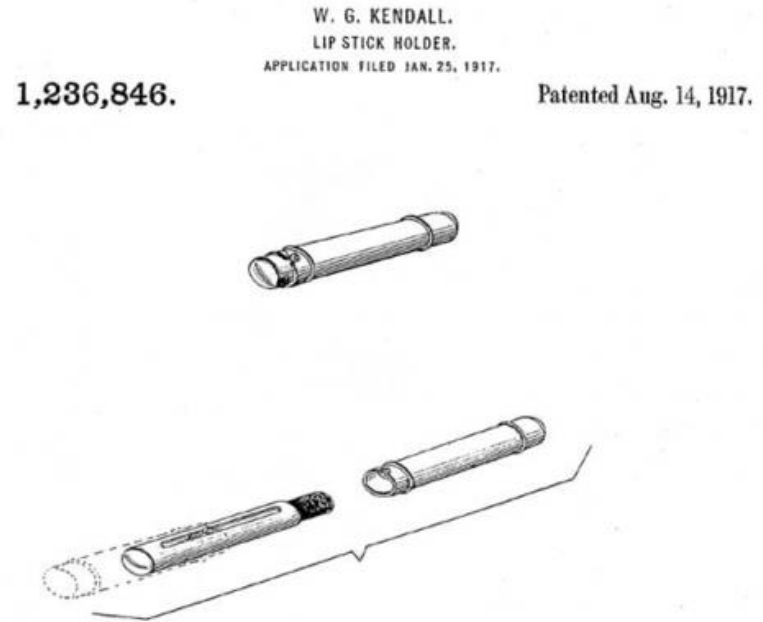
Katie Kruisselbrink



Madison Kuczynski

The Cosmetics Industry

- The cosmetics industry is worth over \$500 billion
- The lipstick market alone is valued at \$13.1 billion
- Since the first lipstick tube was in 1917, lipstick components have developed into complex designs



The Cosmetics Industry



Christian Louboutin's Brand Recognition

- Received fame from red-bottom shoes
- Universally recognized as a luxury brand
- Easily identifiable for shoes and related products
- Currently sells 700,000 pair of shoes a year
- Subject to counterfeit issues due to the company's notoriety



Christian Louboutin's Brand Recognition

- Celebrity recognition
- Collaborations with Disney
- Featured in Movies



Louboutin's Expansion into the Cosmetics Market

“Christian Louboutin is all about red,
Parisian extravagance and playful irreverence”

- Brand wanted to empower women
- Red-bottoms inspired by assistant putting on red nail
- Famous “Rouge” color was later translated into nail polish
- Container inspired by the shoe's stiletto point

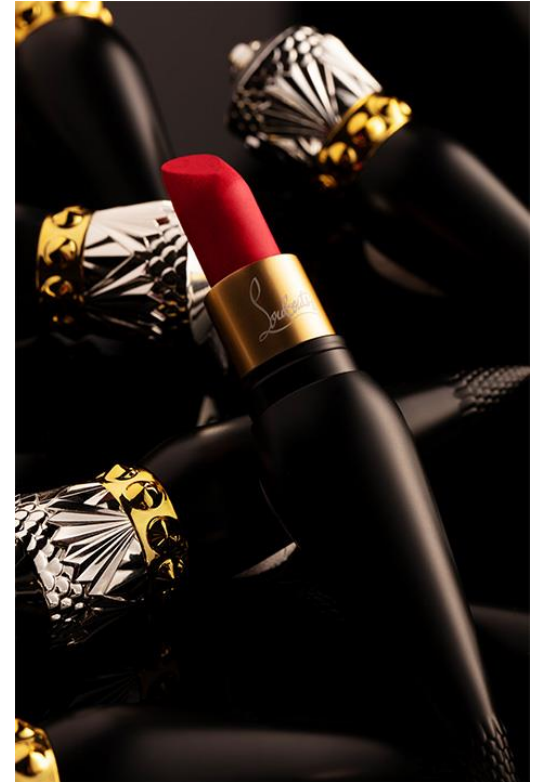


Louboutin Launches Unique Lipsticks

- Inspired by Queen Nefertiti and the Art Deco movement
- 38 shades and 3 textures
- \$90 price tag
- Bullet-shaped design with an embellished crown cap, topped with a ring

“All a woman wants is a pair of
Louboutin and red lips”

CHRISTIAN LOUBOUTIN



Louboutin Launches Unique Lipsticks

- Container meant to catch the eye and can be worn as a necklace
- Formula includes standard ingredients such as wax, oil, and pigment depending on the color of the lipstick
- Most known for its red shade
- Licensing agreement with Puig under the Louboutin brand for licensing, development and distribution.
- Louboutin retains the IP rights



Louboutin's Presence in the Cosmetics Industry

- The cosmetics industry has flourished into one of the most successful markets
- These high-end brands can predict success based on their popularity of related products
 - Ex: Christian Louboutin, Chanel, Yves Saint Laurent, Dior
- Louboutin's design of their products, similarly shaped to their stiletto heels, distinguishes the brand among competitors



Process of Protection

- In the cosmetics industry, competition has significantly increased
- The traditional presentation has escalated into works of art
- The use of colors, dramatic shapes, formulation and packaging has complicated the protections of intellectual property
- For these reasons, the necessity for intellectual property protection makes protection a forefront in a company's business strategy

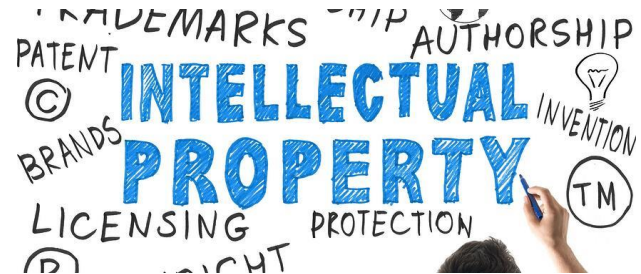
Planning for Protection - General Strategy

The cosmetics industry is protected by a variety of intellectual property rights:

- Patents, design patents or industrial design, trademarks, copyright, and unfair competition or passing off

Steps

- File for protection in all desirable countries
- File for protection in countries where counterfeits may be an issue
- Account for countries that allow for automatic protection without registration
- Identify parts of the design that may not be protected or have received prior protection via other companies



(Lack of) Patent Protection in Cosmetics Industry

Patents seem to be one of the least used types of IP protection

- Must disclose the various steps in product creation
- Identify the parts of the products to be protected
- Disclosure includes the specific ingredients and compounds in the product



For these reasons, companies may be deterred from patent protection at the risk of exposing insecure elements.

Louboutin's Distinguishing Product Aspects

- Distinguishable packaging
- Various shades available
- Easily identifiable shape
- More than one lipstick design including different casings, embellishments, and colors
- Small loop at the top allowing the item wearable as a necklace



Countries Analyzed for This Project

This project specifically identifies protection in:

- The United States
- The European Union
- China



These countries are currently amongst the largest and most relevant markets in terms of sale volumes for Christian Louboutin.

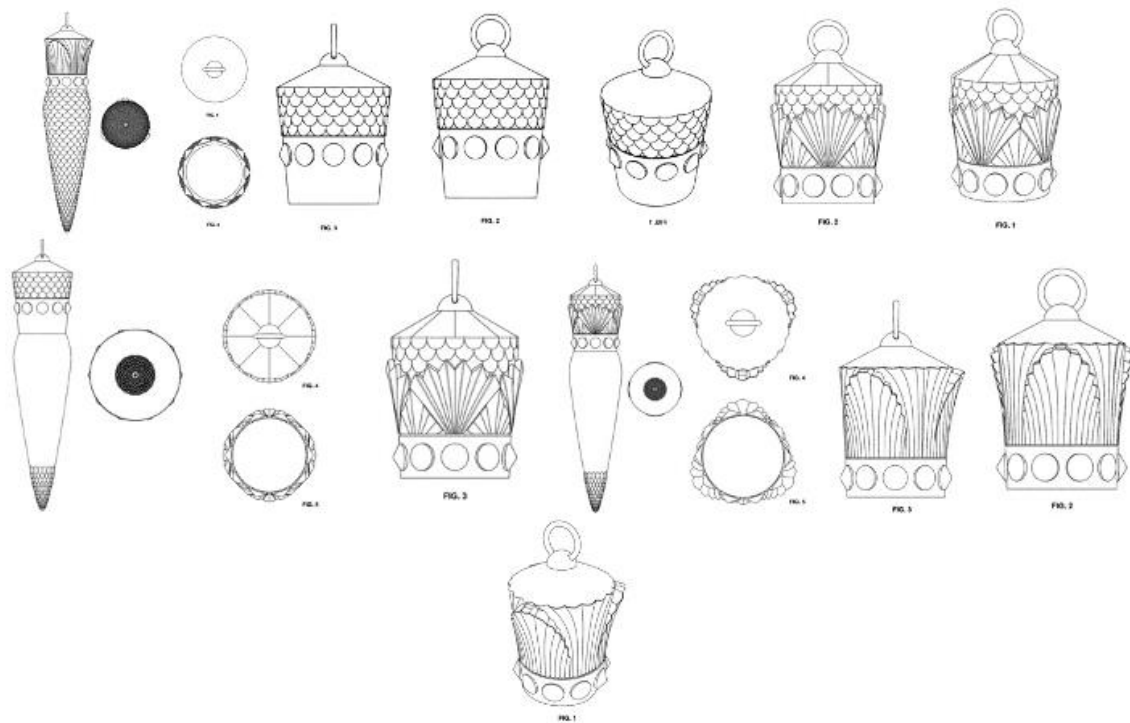
Christian Louboutin and the lipstick are also protected in other countries that are not specifically analyzed here, such as Canada, Malaysia, etc.

United States - Design Patents

- Appearance and design must be new and unique
- Christian Louboutin has 3 lipstick design patents
 - For the containers and packaging
 - Includes the pointed bottom and crown shaped top
- The company does not have protection of the lipstick's use as a necklace
 - Questions whether this right or a similar design is owned by another company



United States - Design Patents



United States - Trademarks

Christian Louboutin has 3 registered logo trademarks for Class 3.

CHRISTIAN LOUBOUTIN

2010



2010



2017

United States - Trademarks

Louboutin TM protection includes:

- Lipsticks
- Lip-glosses
- Perfume
- Nail polish
- Eye makeup
- Skincare

No specific TM registration for:

- Bidimensional or 3-D shape of the container or crown-shaped cap



United States - Unregistered Trademarks & Trade Dress

US provides protection against unfair competition practices

- Section 43(a) of the Lanham Act protects the unregistered trade dress and marks of the lipstick
 - They are distinctive of Louboutin's products
 - The marks have acquired secondary meaning
 - The mark itself and famous Rouge color show the item is famous and protected beyond the likelihood of confusion



United States - Copyrights

Christian Louboutin has no registered copyrights in the US

But, copyright protection attaches regardless of registration:

- Protects original works of authorship and creative designs
- The lipstick design is protected as a pictorial, graphic, and sculptural work
- The copyright protections lasts for the life of the author +70 years
- Creator nationality or domicile does not change this protection



United States - Copyrights

Limitations:

- Features must be separately identified from and exist independently of a useful article
 - Bullet-shape
 - Studded Crown Cap
 - Wearable as a necklace
- Material that is in the public domain, or owned by an individual/entity cannot receive protection, but in the latter case, authorization is necessary



United States - Copyrights

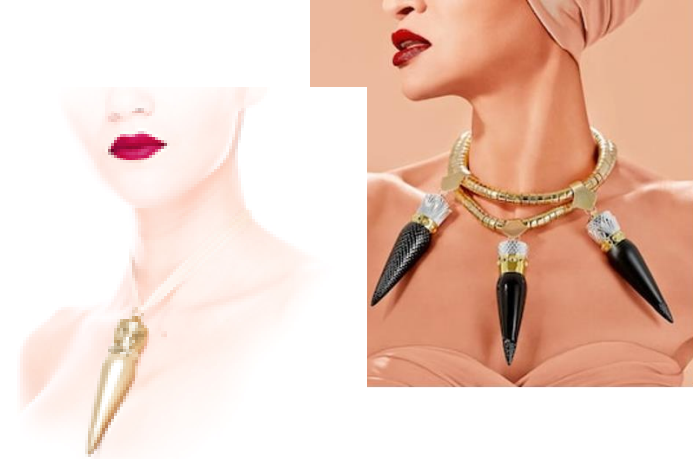
Exceptions for a useful article from Star Athletica

Test:

1. The design can be perceived as a 2 or 3 dimensional work of art separate from the useful article
2. The design would qualify as a protectable pictorial, graphical, or sculptural work either on its own or in some other medium if imagined separately from the useful article



Star Athletica v. Varsity Brands



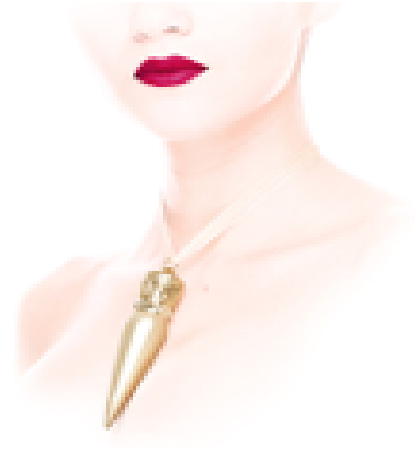
United States - Copyrights

Louboutin's Copyright Protection:

- Louboutin lipstick packaging may receive copyright protection as a sculptural work
- Use as a necklace is also protected under both Star Athletica tests

Louboutin's Additional Protection from Silvertop Associates:

- Although the lipstick may include elements that may in and of themselves not be protectable alone, the design, as a whole, is separable and eligible for protection



**Silvertop Associates v.
Kangaroo Manufacturing**

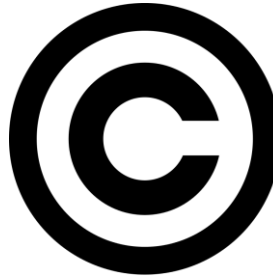
United States - Overall Protection

Christian Louboutin lipstick protection:

- Design Patents
- Trademarks
- Unregistered trademark protection
- Copyright

Overlap of protection

- Overlap allows the company to enforce the separate rights at the same time, depending on the infringed elements in a given case.



European Union - Industrial Design

Christian Louboutin does not have designs registered in the EU



Community Design Protection

- Simplified process to acquire unitary ID protection
- Applies to the appearance of a product resulting from attributes
 - Shape, colors, and materials
- Exclusive rights to the design for up to 25 years
- Unregistered designs receive protection from deliberate copying under certain circumstances

European Union - Industrial Design

Unregistered Community Designs

- Unregistered designs are protected from deliberate copying
- Unregistered community design protection only lasts for 3 years
 - The lipstick no longer qualifies for the 3-year protection



European Union - Industrial Design

Although the lipstick design no longer qualifies for protection as an Unregistered Community Design, the design will still receive protection under copyright law

- This is an example of an overlap in IP rights between ID and copyright



European Union - Trademarks

Trademarks:

- Christian Louboutin has numerous trademarks applicable to their cosmetics and other related designs

Graphic representation	Trade mark name	Designated territory	Application date	Trade mark status	Trade mark office	Application number	Trade mark type
		LV, LU, LT, GB, HR, RO, HU, BG, FR, BE, DE, DK, PL, IE, CZ, A	06/07/2012	Registered	EUIPO-EU	011022696	Figurative
		UA, RU, CH, IL, EG, AZ, UZ, KZ, MC, NO	03/01/2013	Registered	WIPO-WP	1163101	Figurative
		LV, LU, LT, GB, HR, RO, HU, BG, FR, BE, DE, DK, PL, IE, CZ, A	23/12/1998	Registered	EUIPO-EU	001026905	Word
		US, RU, CH, SG, VN, AU, MC, CN, TR, NO	18/03/2010	Registered	WIPO-WP	1036883	Word
		LV, LU, LT, GB, HR, RO, HU, BG, FR, BE, DE, DK, PL, IE, CZ, A	12/05/2010	Registered	EUIPO-EU	009008815	Figurative
		JP, US, KR, SG, VN, AU, KZ, TR, NO, UA, CH, RU, MC, CN	12/05/2010	Registered	WIPO-WP	1041223	Figurative

European Union - Unfair Competition

Aside from Louboutin's registered marks, the specific shapes of the lipstick are protected as unregistered marks.

Unfair Competition laws prevent other companies from:

- Unfair business practices
- Limiting innovation
- Restricting competition
- Using bargaining power to limit suppliers or customers from doing business with competitors
- Giving misleading information



European Union - Unfair Competition

Trade Dress:

- The lipstick also receives trade dress protection of the overall appearance including size, shape, color, texture and graphics as a whole by combining TM & ID rights
- Protection of the shape of goods or the packaging goods is permanent to distinguish goods among competitors



European Union - Copyrights

No copyright registration required

Must be original

1. The lipstick must imply the existence of an original object, such as reflecting the personality of the author, manifesting free and creative choices rather than confined by technical formalities, rules or other restraints
2. The lipstick's qualification as a work is reserved for the elements which are an expression of the creation -- The lipstick must be identified with sufficient precision and objectivity.

European Union - Copyrights

Louboutin's copyright protection of the lipstick:

- Originality: design of bullet-shape, studded crown, and ring on top allowing use as a necklace
- Expression: the lipstick is a clear expression of the original design

Because of these elements, the lipstick has copyright protection despite no clear registration.



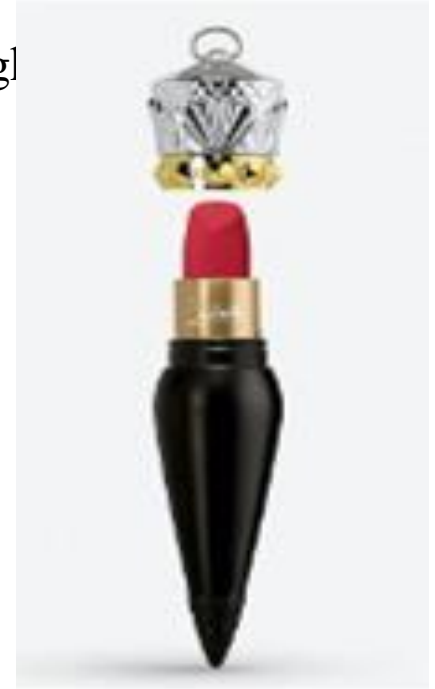
European Union - Overall Protection

Overlap of protection:

- Christian Louboutin's lipstick is simultaneously protected through design law, trademarks, copyright and unfair competition laws.
- Qualification for protection of one form can overlap with protection under another

Reasons for sufficient protection of the lipstick:

- Distinct characteristics
- Originality
- Creative uses



China - Design Patents

Christian Louboutin has 2 design patents protecting the body of the lipstick and the crown lid

- This protection lasts for 10 years from the date of filing

The design patents cover the overall shape and style of the lipstick packaging

- The lipstick must comply with absolute novelty

China - Louboutin's Registered Design Patents



设计2左视图,设计3左视图,设计1主视图,设计1后视图,设计1左视图,设计1右视图,设计1俯视图,设计1仰视图,设计1主视图,设计2主视图,设计2后视图,设计2右视图,设计2俯视图,设计2仰视图,设计3主视图,设计3后视图,设计3左视图,设计3右视图,设计3俯视图,设计3仰视图,设计3主视图,设计3左视图,设计3右视图,设计3后视图,设计4左视图,设计4右视图,设计4俯视图,设计4仰视图,设计4主视图,设计5左视图,设计5后视图,设计5右视图,设计5俯视图,设计5仰视图,设计5主视图,设计6主视图,设计6后视图,设计6左视图,设计6右视图,设计6俯视图,设计6仰视图,设计6主视图

China - Trademarks

Christian Louboutin has several trademarks registered within the “class 3” cosmetics protections

- 4 of the trademarks cover Louboutin’s cosmetics products, but not specifically the lipstick
- Main purpose is to protect the Louboutin name and overall brand

China - Louboutin's Registered Trademarks

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Sort: Data of application Print Comparison Screening selected 0 trademark

Search to 16 trademarks Reference only, do not have any legal effect.

<input type="checkbox"/>	Serial number	Application No./registration No.	Date of application	Trademark content	Name of applicant
<input type="checkbox"/>	1	42812123	2019年12月04日	LOUBOUTIN	桐乡市德恒艺术设计工作室
<input type="checkbox"/>	2	41124202	2019年09月18日	CHRISTIAN LOUBOUTIN	黎国珍
<input type="checkbox"/>	3	39716318	2019年07月17日	世世罗卜丁 SHIHILOUBOUTIN	厦门世世罗卜丁体育用品有限公司
<input type="checkbox"/>	4	39730497	2019年07月17日	法兰罗卜丁 FANLAN LOUBOUTIN	厦门法兰罗卜丁体育用品有限公司
<input type="checkbox"/>	5	39730503	2019年07月17日	范罗卜丁 VANRUI LOUBOUTIN	厦门范罗卜丁体育用品有限公司
<input type="checkbox"/>	6	39336532	2019年07月01日	LOUBOUTIN	深圳市墨道科技有限公司
<input type="checkbox"/>	7	37066177	2019年03月25日	LOUBOUTIN	宋洋
<input type="checkbox"/>	8	35700729	2019年01月02日	LOUBOUTIN WORLD	王静
<input type="checkbox"/>	9	34270534	2018年10月25日	CARINA LOUBOUTIN	深圳市墨道科技有限公司
<input type="checkbox"/>	10	25966168	2017年08月21日	LOUBOUTIN	罗卜丁(上海)儿童用品有限公司
<input type="checkbox"/>	11	20529970	2016年07月04日	LOUBOUTIN	周士志
<input type="checkbox"/>	12	20170245	2016年06月01日	BEAUTE DE CHRISTIAN LOUBOUTIN	沈华辉
<input type="checkbox"/>	13	10814532	2012年05月02日	LOUBOUTIN	范里斯德鲁布托 罗姆号
<input type="checkbox"/>	14	G1041223	2010年07月13日	CHRISTIAN LOUBOUTIN	CHRISTIAN LOUBOUTIN
<input type="checkbox"/>	15	G1036883	2010年05月25日	CHRISTIAN LOUBOUTIN	CHRISTIAN LOUBOUTIN
<input type="checkbox"/>	16	5176887	2006年02月27日	CHRISTIAN LOUBOUTIN	潘力威

Total pages:16 | Current page:1 / 1

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Trademark details Trademark procedure

Application No./registration No. G1041223 Date of application 2010/07/13 International Classification 3

Name of applicant(Chinese) CHRISTIAN LOUBOUTIN

Name of applicant(English) CHRISTIAN LOUBOUTIN

Applicant address(Chinese) 1 RUE VOLNEY 1 / 5052 PARISFRANCE

Applicant address(English) 1 RUE VOLNEY 1 / 5052 PARISFRANCE

Public announcement number of first total Public announcement number of registration Community marks No

Public announcement Date of first total Public announcement Date of registration Type of trademark 一标

Exclusive right duration 2010/07/12 to 2010/07/12 Form of trademark

Date of international Registration 2010/07/12 Date of last formalization Date of priority

Agents name/receiving organization

Trademark procedure Click to view

Trademark status icon LIVE/REGISTRATION/Issued and Active (30)

Reference only, do not have any legal effect.

China - Louboutin's Registered Trademarks

		香料制品、个人用香精类、化妆品、护肤霜和发水、身体护理用品、凝脂粉、洗护化妆油 剂；化妆品用护发产品、凝脂粉和发乳；洗面奶、皂用干爽胭脂膏、面膜、唇膏和指甲膏；香 水、剃须香水、花露水；化学防晒剂；化妆品：防晒霜、美容霜、粉底、润肤露、眼霜、卸妆膏、眼	
Good's/services:		鞋帮、服装、按平台 □ 鞋、 View details Similar group 0301.0305.0306	
Application No./registration No.	G1041223	Date of application	2010/07/13
Name of applicant(Chinese)	CHRISTIAN LOUBOUTIN	International Classification	3
Name of applicant(English)	CHRISTIAN LOUBOUTIN		
Applicant address(Chinese)	1 RUE VOLNEY-F-75002-PARIS(FRANCE)		
Applicant address(English)	1 RUE VOLNEY-F-75002-PARIS(FRANCE)		
Public announcement number of first trial	Public announcement number of registration	Community marks	No
Public announcement Date of first trial	Public announcement Date of registration	Type of trademark	一般
Exclusive right duration	2020/05/12 to 2030/05/12	Form of trademarks	
Date of International Registration	2010/05/12	Date of late formulation	Date of priority
Agents name/receiving organization			
Trademark procedure	Click to view		

Trademark status icon

Application No./registration No.		Date of application	International Classification
G10K66B		2010.09.23	I
Name of applicant(Chinese)	CHRISTIAN LOUBOUTIN		
Name of applicant(English)	CHRISTIAN LOUBOUTIN		
Applicant address(Chinese)	1 RUE VOLNEY-F-75002 PARIS(FRANCE)		
Applicant address(English)	1 RUE VOLNEY-F-75002 PARIS(FRANCE)		
Public announcement number of first trial	Public announcement number of registration	Community marks	No
Public announcement Date of first trial	Public announcement Date of registration	Type of trademark	—B
Exclusive right duration	2020/01/18 to 2030/01/18		Form of trademarks
Date of International Registration	Date of late formulation	Date of priority	
Agents name/receiving organization			
Trademark procedure			
Click to view			
LIVE REGISTRATION/Issued and Active 注册			

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Help Instructions

The current data is up to 4/20/2019/09:29

 trademark details

 Trademark procedure



Good/s/Services

香料制品; 个人用香精油; 洁肤制品; 洁肤霜和水; 护肤化妆品; 凝胶; 洗面奶和霜;
化妆品等; 凝胶和洗剂; 洗面奶; 洗手丰美液等; 雪花; 唇膏和指甲膏; 香水; 剃须膏;
水; 花露水; 化妆品; 化妆品; 润肤露; 膏体露; 卸妆膏; 卸妆膏; 卸妆膏; 卸妆膏;
指甲油; 口红; [show details](#)

Similar group

0301.0305,0306;

Application
No./registration
No.

G1636883

Date of
application

2010/05/25

International
Classification

3

Name of
applicant(Chinese)

CHRISTIAN LOUBOUTIN

Name of
applicant(English)

CHRISTIAN LOUBOUTIN

Applicant
address(Chinese)

1 RUE VOLNEY-F-75002 PARIS(FRANCE)

Applicant
address(English)

1 RUE VOLNEY-F-75002 PARIS(FRANCE)

Public
announcement
number of first trial

Public
announcement
number of
registration

Community
marks

No

Public
announcement
Date of first trial

Public
announcement
Date of
registration

Type of
trademark

—商

Exclusive right
duration

2020/03/18 to 2030/03/18

Form of
trademarks

Date of
international
Registration

2010/03/18

Date of late
formulation

Date of priority

Agents
name/receiving
organization

Trademark
procedure

[Click to view](#)

Trademark status
icon

LIVE/REGISTRATION/Issued and Active

注册

China - Unfair Competition

Anti-Unfair Competition Law

- Restricts unfair competition in advertising
- Used to supplement other laws when specific IP laws cannot fully protect the product
- Prevents operators from disrupting the market competition order or harming legitimate interests of businesses or consumers

The Anti-Unfair Competition Law protects the lipstick from unfair competition where IP laws cannot provide protection.



China - Overall Protection

China's new effort to strengthen the IP system and limit counterfeit production

- Three new IP courts in Beijing, Shanghai, and Guangzhou
- More punitive damages for counterfeiting & trade secret appropriation

These will affect the sale and commercialization of Louboutin's lipstick

- Reduce the company damages from counterfeit issues
- More enforcement against luxury counterfeits
- Greater protection for the name, brand, and products



STATE INTELLECTUAL PROPERTY OFFICE
OF THE PEOPLE'S REPUBLIC OF CHINA



CNIPA

NATIONAL INTELLECTUAL PROPERTY ADMINISTRATION, PRC

Strategies in Marketing: Influencers, Advertising, and Social Media

Free Advertising

- Growth of social media has led to influx of “influencers”
 - Individuals, whether normal people or celebrities
- Advertising through influencers
 - Influencers with a large following have a reach that can span nationally and worldwide
 - The outfits they wear and the products they used are publicized to their followers



Influencers and Social Media

How do these influencers help advertise brands like Louboutin?

- Consumers idolize celebrities and influencers
 - These consumers and followers are motivated by the outfit and product choices of these individuals
 - this sort of “free advertising” has largely benefitted luxury brands like Louboutin by increasing exposure to the brand and making it widely desirable
 - Influencers are generally paid for their advertising services either monetarily or through the gifting of products
 - This form of advertising is significantly less expensive than general advertising and marketing options



Contracted Social Media Influencers

Many companies contract with celebrities and influencers to promote their products through social media

- When companies enter into agreements with influencers, it is important for the contract to be in writing and include strict contracting terms including:
 - Disclosure agreements
 - Original content agreements
 - Dates and compensation terms
 - Terms outlining promotions and giveaways



Advertising: Jennifer Lopez

- Jennifer Lopez is an internationally known singer and actress
- Released a song in 2009 specifically referencing Louboutin
 - free advertising tool for Louboutin
 - Organic endorsement
- Louboutin is known for staying away from soliciting social media endorsements
 - Because of this they are more elite
 - More opportunity to be endorsed by A-list celebrities and other elite individuals



Advertising: Sex & the City

- Most influential example of organic advertising
- Main character Carrie Bradshaw is devoted to Louboutin shoes
 - For years Bradshaw has served as a style icon to the millions of viewers of the show
 - Louboutin shoes pop up in countless episodes and are popular among fans who want to emulate the style and fashion choices seen in the show and movies



Louboutin's History of Enforcement

- With its rise in popularity as a luxury good, Louboutin has been fighting off counterfeiters and copycats for years
 - Usually it counterfeiters and copycats seek to emulate the iconic red sole
- Since breaking into the cosmetic industry with bold new designs, Louboutin has already begun to have IP enforcement issues

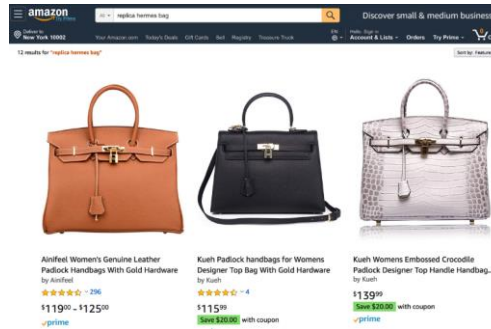
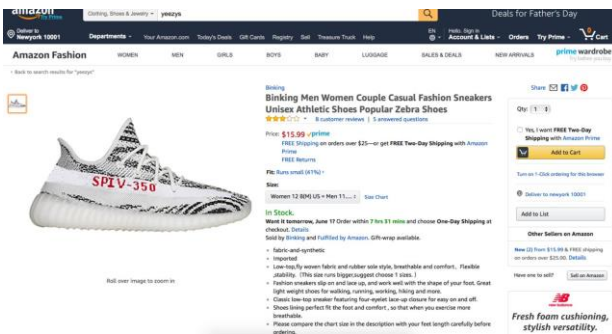
Enforcement: Louboutin v. YSL

- Details leading to lawsuit:
 - YSL came out with an all red shoe that included a red sole
 - Louboutin is known for their red sole
 - Louboutin filed suit against YSL alleging:
 - Trademark infringement
 - Counterfeiting
- Court's Decision:
 - Court ruled that Louboutin cannot obtain a trademark for the entire shoe being red, but where the red sole contrasts with the color of the rest of the shoe, the trademark applies
 - Therefore a single color can sometimes serve as a trademark in the fashion industry where it has acquired secondary meaning



Enforcement: Amazon

- Louboutin has gone up against Amazon regarding counterfeiting
 - European Union Case
 - Court held that Amazon is liable if it sells and ships counterfeit shoes made by third parties



Enforcement: Moscow, Russia

- Lawsuit stemmed from Russian companies selling counterfeit Louboutin fragrances
 - Russian company argued that the perfume products were legally imported and that there was a lack of similarity between Louboutin's trademarks and the Russian companies' trademarks
 - The appellate court disagreed and upheld the lower court's decision to award Louboutin damages and injunctive relief



Enforcement: Guangzhou Wentan Trading Co., Ltd

- First counterfeiting issue regarding Louboutin's bullet-shaped lipstick
 - Louboutin filed suit in the Guangzhou IP Court
 - Louboutin alleged that the Chinese manufacturer infringed its design patent-protected lipstick packaging by creating and selling lipstick products identical or similar to the designs of Louboutin
 - Court issued its first preliminary injunction since it was created in 2014 and ordered Guangzhou Wentan Trading Co. to immediately stop producing the lipsticks
 - Court held Louboutin's patent as valid and ruled that not issuing a preliminary injunction would cause greater damage to Louboutin than to the counterfeit Chinese manufacture

Example of a counterfeit bullet-shaped lipstick:



Takeaways

- The Cosmetics Industry
 - The cosmetics industry has flourished in the last 10 years
 - Luxury companies, like Christian Louboutin, are at an advantage when entering this market
 - Louboutin successfully entered the cosmetics industry beginning with nail polish, perfume and the bullet-shaped lipstick

Takeaways

- **Bullet-Shaped Lipstick Intellectual Property Protection**
 - **United States:** 3 design patents, 3 registered logo trademarks, unregistered trademark protection, and unregistered copyright protection of the design, shape and use.
 - **European Union:** Numerous trademarks applicable to the lipstick, trade dress protection of the size, shape, color, texture and graphics, and copyright protection
 - **China:** 2 design patents protecting the body, shape, and crown lid, several trademarks registered within the “class 3” cosmetics protection, strengthened protection against unfair competition and counterfeits

Takeaways

- Marketing and Advertisements
 - Strong shift to advertisements on social media via celebrities and influencers
 - These individuals are idolized by consumers, often providing brands with free advertising just by wearing the products
 - Important to have written contractual agreements with these individuals

Takeaways

- History of Enforcement
 - Luxury products are the most copied products worldwide
 - Louboutin has dealt with counterfeit and unfair competition suits for the lipsticks and related products
 - The court has generally favored Louboutin and ruled against intentional copying that is likely to cause consumer confusion

Thank You

